

**Staff
Summary
Report**



**To: Mayor & City Council
Through: City Manager**

**Agenda Item Number 24
Meeting Date: 12/14/00**

SUBJECT: Development Agreement between City of Tempe and Emerald Holdings, L.L.C.

PREPARED BY: C. Brad Woodford, City Attorney (350-8229)

REVIEWED BY: C. Brad Woodford, City Attorney (350-8229)

BRIEF: Authorize the Mayor to execute a Development Agreement with Tom Tait for the relocation of the Highline Canal beneath Warner Road and Priest Drive.

COMMENTS: **FLOOD CONTROL ADMIN (0808-01)** This Development Agreement with Emerald Holdings, L.L.C., and Tom and Patricia Tait authorizes the relocation and reconstruction of the Highline Canal beneath Priest and Warner Road to enable the orderly development of the property located at the northwest corner of Priest and Warner Road. A portion of Priest and Warner Road would be conveyed to the United States of America who owns the Highline Canal. A roadway easement would be granted to the City over such property and the relocated Highline Canal property would be transferred to the City of Tempe, and eventually to the Tait property for development. The City Council previously adopted Ordinance 2000.32, which authorized the conveyances of the property on July 20, 2000.

Document Name: (20001214casg01) Supporting Documents: Yes

SUMMARY: The conveyance of portions of Priest Drive and Warner Road to the United States of America would be expressly conditioned upon the receipt of a roadway easement to enable the roads to be rebuilt, and would eventually allow the conveyance of the relocated Highline Canal to the Tait property for development. Public utility easements would be provided on the Tait property for necessary infrastructure.

FISCAL NOTE: No fiscal impact to the City, all expenses to be borne by Tait.

RECOMMENDATION: That the City Council authorize the Mayor to execute the Development Agreement.

When recorded mail to:
Tempe City Basket

DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is entered into as of the ____ day of November, 2000, by and between the City of Tempe, an Arizona municipal corporation (the "City") and Emerald Holdings, L.L.C., an Arizona limited liability company, successor in interest to Starlight Investments, L.L.C., an Arizona limited liability company as to an undivided fifty percent (50%) interest and Tom Tait and Patricia E. Tait, husband and wife, as to an undivided fifty percent (50%) interest ("Emerald").

RECITALS

A.. Arizona Revised Statutes §9-500.05 authorizes the City to enter into a Development Agreement with a landowner or any other person having an interest in real property located within the City.

B. On the effective date of this Agreement, Emerald is the owner of certain real property located within the corporate boundaries of the City described in Exhibit "A" attached hereto and made a part hereof (the "Emerald Property").

C. The Emerald Property is bordered on two sides by public roadways owned by the City namely Priest Drive and Warner Road described in Exhibit "B" attached hereto and made a part hereof (the "Priest and Warner Roadway Property").

D. A portion of the South Branch of the Highline Canal (the "Canal") and the underlying property (the "Highline Canal Property") owned by the United States of America and operated by the Salt River Project Agricultural Improvement and Power District traverses the

southeast corner of the Emerald Property. The Highline Canal Property is described in Exhibit "C" attached hereto and made a part hereof.

E. To facilitate the orderly development of the Emerald Property and in order to develop the Emerald Property to its highest and best use, Emerald, at its sole cost and expense, desires to relocate and reconstruct the Canal under the Priest and Warner Roadway Property in exchange for conveyance of the Highline Canal Property to Emerald. To accomplish this, a series of exchanges is required. Emerald has requested that the City transfer its interest in the Priest and Warner Roadway Property to the United States of America in exchange for the Highline Canal Property which would then be transferred to Emerald, in exchange for certain easements and other considerations referenced hereinafter.

F. The City is willing to participate in the contemplated exchange of properties and relocation of the Canal under the Priest and Warner Roadway Property in order to facilitate the orderly economic development of the Emerald Property upon the terms and conditions set forth hereinafter.

NOW, THEREFORE, for the consideration set forth in this Agreement, the sufficiency of which is acknowledged by the parties, the City and Emerald agree as follows:

1. The recitals set forth above are acknowledged by the parties to be true and correct and are incorporated herein by this reference.

2. Emerald at its sole cost and expense shall relocate and reconstruct the Canal in an underground mode within the Priest and Warner Roadway Property.

3. If not already dedicated, Emerald shall dedicate a public utility easement of a width of not less than eight feet within the Emerald Property adjacent to the Priest and Warner Roadway Property to facilitate the undergrounding of public utilities which would normally be placed within the Priest and Warner Roadway Property but for the relocation of the

Canal.

4. The City shall transfer and convey its interest in the Priest and Warner Roadway Property to the United States of America by warranty deed to accommodate the contemplated exchange and relocation of the Canal.

5. Upon recordation of a deed from the United States of America transferring its interest in the Highline Canal Property to the City, the City shall transfer its interest therein to Emerald, by deed to complete the exchange.

6. This Agreement is expressly conditioned upon Emerald causing the United States of America and/or Salt River Project Agricultural Improvement and Power District, acting as its duly authorized agent, to convey an easement for roadway purposes to the City over the Priest and Warner Roadway Property substantially in the form attached hereto as Exhibit "D".

7. This Agreement may be terminated by the City in accordance with the provisions of A.R.S. Sec. 38-511.

IN WITNESS WHEREOF, the parties hereto have executed this Development Agreement as of the day and year first above written.

EMERALD HOLDINGS, L.L.C., an Arizona
limited liability company, successor in interest to
STARLIGHT INVESTMENTS, L.L.C., an Arizona
limited liability company, TOM TAIT and
PATRICIA E. TAIT

By Tom Tait

Its managing member

CITY OF TEMPE,
an Arizona municipal corporation

By _____
Neil Giuliano, Mayor

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

STATE OF ARIZONA)
 : ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____,
2000, by Neil G. Giuliano, the duly elected Mayor of the City of Tempe, State of Arizona.

Notary Public

My Commission Expires:

11

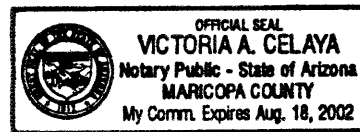
STATE OF ARIZONA)
 : ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 20th day of November, 2000, by Tom Tait, for and on behalf of Emerald Holdings, L.L.C., an Arizona limited liability company.

Victoria A. Celaya
Notary Public

My Commission Expires:

August 18, 2002

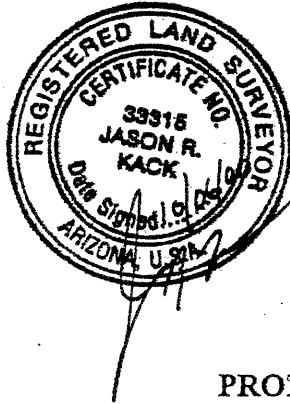


TT

LEGAL DESCRIPTION

Lot 5, The Emerald, according to Book 536 of Maps, page 24, Records of Maricopa County, Arizona, as corrected by Affidavit of Correction recorded as Document No. 2000-0754819, Records of Maricopa County, Arizona, except that portion within the Highline Canal.

11



REVISED OCTOBER 6, 2000
REVISED FEBRUARY 24, 2000
REVISED FEBRUARY 2, 2000
NOVEMBER 19, 1999
DEI #99200

**PROPOSED USA FEE PARCEL
LEGAL DESCRIPTION**

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 17, TOWNSHIP 1 SOUTH
RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA
COUNTY, ARIZONA;

COMMENCING AT THE SOUTHEAST QUARTER CORNER OF SAID SECTION 17;

THENCE SOUTH 89°24'45" WEST, ALONG THE SOUTH LINE OF THE SOUTHEAST
QUARTER OF SAID SECTION 17, A DISTANCE OF 6.78 FEET;

THENCE NORTH 00°35'15" WEST, LEAVING SAID SOUTH LINE, A DISTANCE OF 6.84
FEET TO THE **POINT OF BEGINNING** OF THE PARCEL HEREIN DESCRIBED;

THENCE SOUTH 89°24'45" WEST, A DISTANCE OF 323.48 FEET;

THENCE NORTH 22°22'30" EAST, A DISTANCE OF 62.26 FEET;

THENCE NORTH 89°58'23" EAST, A DISTANCE OF 186.57 FEET;

THENCE NORTH 44°59'01" EAST, A DISTANCE OF 79.58 FEET;

THENCE NORTH 00°08'35" WEST, A DISTANCE OF 96.72 FEET;

THENCE NORTH 06°08'03" EAST, A DISTANCE OF 100.60 FEET;

THENCE NORTH 00°08'35" WEST, A DISTANCE OF 360.08 FEET;

THENCE NORTH 22°22'30" EAST, A DISTANCE OF 119.24 FEET;

THENCE SOUTH 00°08'35" EAST, A DISTANCE OF 777.72 FEET TO THE **POINT OF
BEGINNING** OF THE PARCEL HEREIN DESCRIBED;

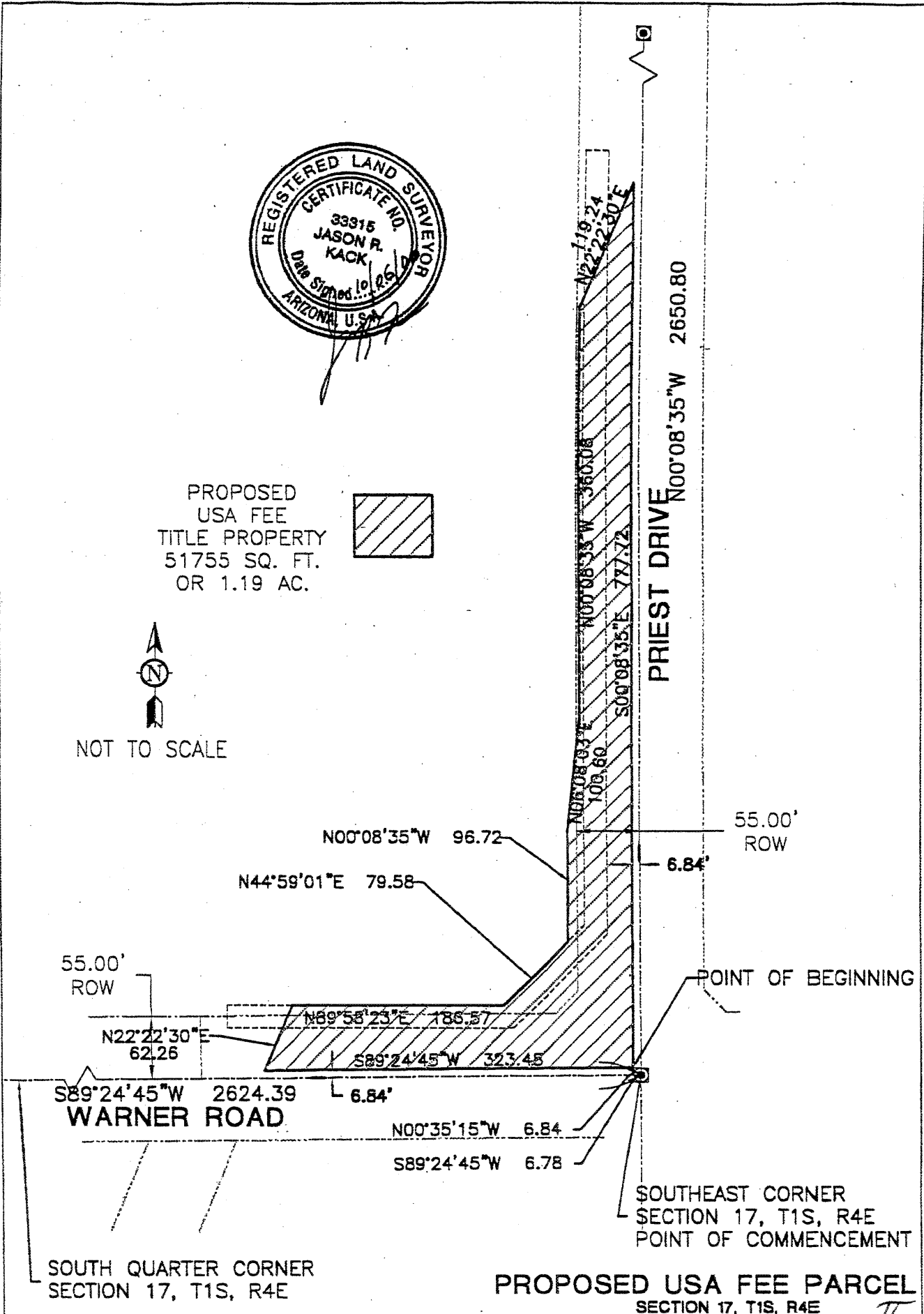
SAID PARCEL CONTAINS 51,775 SQ. FT. OR 1.19 ACRES.



PROPOSED
USA FEE
TITLE PROPERTY
51755 SQ. FT.
OR 1.19 AC.



NOT TO SCALE

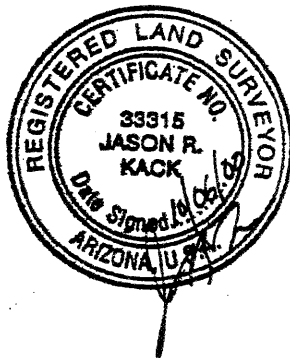


PROPOSED USA FEE PARCEL
SECTION 17, T1S, R4E

DATE: 8/18/99 G:\DWG\9030\9030EX03 DRAWN: JAH

DEFI PROFESSIONAL SERVICES
7500 N. 15th Street, Suite 290
Phoenix, Arizona 85020 Ph. (602) 954-0038

REVISED 10/08/00
EXHIBIT "B"



REVISED OCTOBER 6, 2000
REVISED FEBRUARY 24, 2000
REVISED NOVEMBER 19, 1999
AUGUST 18, 1999
JOB # 99030

EXISTING USA FEE PARCEL

A PORTION OF THE SOUTH BRANCH OF THE HIGHLINE CANAL, AS QUIT CLAIMED TO UNITED STATES OF AMERICA BY QUIT CLAIM DEEDS RECORDED IN BOOK 122 OF DEEDS, PAGE 1 AND PAGE 333 RECORDS OF MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 17 OF TOWNSHIP 1 SOUTH, RANGE 4 EAST OF THE GILA AND SALT RIVER AND BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA;

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 17;

THENCE SOUTH 89°24'45" WEST, ALONG THE SOUTH LINE OF SOUTHEAST QUARTER OF SAID SECTION 17, A DISTANCE OF 382.24 FEET TO A POINT WHICH BEARS NORTH 89°24'45" EAST, A DISTANCE OF 2242.15 FEET FROM THE SOUTH QUARTER CORNER OF SAID SECTION 17;

THENCE NORTH 00°35'15" WEST, LEAVING SAID SOUTH LINE OF SOUTHEAST QUARTER OF SECTION 17, A DISTANCE OF 63.57 FEET TO THE POINT OF BEGINNING OF THE PARCEL DESCRIBED HEREIN;

THENCE NORTH 22°22'30" EAST (N21°10'E RECORD), A DISTANCE OF 809.74 FEET;

THENCE SOUTH 45°08'35" EAST, A DISTANCE OF 17.13 FEET;

THENCE SOUTH 00°08'35" EAST, A DISTANCE OF 141.45 FEET;

THENCE SOUTH 22°22'30" WEST (S21°10'W RECORD), A DISTANCE OF 644.50;

THENCE SOUTH 89°26'24" WEST, A DISTANCE OF 75.40 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED.

SAID PARCEL CONTAINS 51,755 SQUARE FEET OR 1.19 ACRES.

Phoenix Headquarters
6225 North 24th Street, Suite 202
Phoenix, AZ 85016
602.954.0038 Phone • 602.944.8605 Fax

California
3919 Westerly Place, Suite 202
Newport Beach, CA 92660
949.955.0350 Phone • 949.955.0351 Fax

II New Mexico
2929 Coors Blvd. NW, Suite 309
Albuquerque, NM 87120
505.836.6944 Phone • 505.836.6946 Fax
rgais\EXISTUSA.doc

TANGENT TABLE

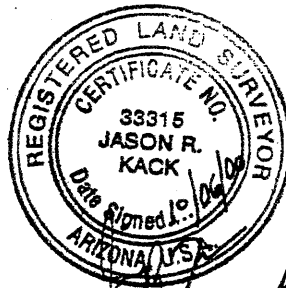
LINE	BEARING	DISTANCE
L1	N00°35'015"W	63.57
L2	S00°08'35"E	141.45
L3	S89°26'24"W	75.40
L4	S45°08'35"E	17.13

51755 SQ FT
OR 1.19 AC.



SOUTH BRANCH OF
HIGHLINE CANAL
PER BOOK 122 OF DEEDS,
PAGE 1 AND PAGE 333, MCR.

POINT OF BEGINNING



N21°10'E (R) 809.74
N22°22'30"E
S22°22'30"W
S21°10'W 644.50 (R)

PRIEST DRIVE
N00°08'35"W 2650.80

2242.15 S89°24'45"W 382.24
WARNER DRIVE
S89°24'45"W 2624.39

SOUTHEAST CORNER
SECTION 17, T1S, R4E
POINT OF COMMENCEMENT

SOUTH QUARTER CORNER
SECTION 17, T1S, R4E

NOT TO SCALE

EXISTING USA FEE PROPERTY
SECTION 17, T1S, R4E

DATE: 11/18/99

C:\WORK\903\1\SURVEY\9030204

DRAWN: JAS

REVISED 10/08/00

EXHIBIT "C"

Page 2 of 2

DET

7600 N. 15th Street, Suite 290
Phoenix, Arizona 85020 Ph. (602) 954-0038

SIONAL SERVICES

RECORDING INFORMATION

EASEMENT FOR ROADWAY

Location (County)
Parcel #

SRP File R/W No.
Project:
W_____ C_____

KNOW ALL MEN BY THESE PRESENTS:

That for the consideration of One (\$1.00) Dollar and other valuable considerations, **SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**, an agricultural improvement and power district, organized and existing under the laws of the State of Arizona, Grantor, hereby grants to the **CITY OF TEMPE**, Grantee, an easement for roadway, water, and sewer lines in the following described real property situated in the County of Maricopa, State of Arizona, to-wit:

See Exhibit A attached hereto and by reference made a part hereof.

TO HAVE AND TO HOLD the easement hereinabove described for use as a right of way for roadway purposes.

It is mutually understood that title to the above described property is vested in the United States of America but right of operation, control and management is vested in the Grantor herein.

The easement herein granted shall be subject to the following conditions:

- 1) Grantor shall retain the prior right to construct, reconstruct, operate and maintain its existing and future underground irrigation, existing and future overhead and underground electrical facilities, existing telecommunication facilities and future SRP telecommunication facilities within the easement herein granted. Grantor shall notify grantee of all proposed operations within the easement area, and will comply with Grantee's undergrounding ordinance No. 88.85, dated 1-12-89
- 2) Grantor shall retain the right to grant easements or permits to other utility companies within the easement herein granted.

TT

- 3) Grantor shall not be liable for any expense, cost or charge arising from Grantee's exercise of rights granted herein. Grantee shall reimburse Grantor for all costs and expenses incurred by Grantor to remove or relocate irrigation or electrical facilities and landscaping to accommodate the purposes for which this easement is granted.
- 4) Grantee shall submit plans for Grantor's approval of any proposed alteration to existing structures within the easement area. Such approval shall not be unreasonably withheld. It is understood and agreed that Grantee shall not be required to submit plans for routine maintenance, above the subgrade level of the street, and minor proposed alterations to existing surface structures within the easement area.
- 5) As a condition of the granting of this easement by Grantor, Grantee expressly agrees to indemnify, defend, and hold harmless, Grantor, its officers, agents, and employees from all liabilities, claims, or demands on account of or arising out of any injury or loss resulting from Grantee's exercise of rights granted herein, insofar as permitted by law.
- 6) In the event the right, privilege, and easement herein granted shall be abandoned and permanently cease to be used for the purposes for which granted, such right shall cease and revert to Grantor, its successors and assigns.
- 7) The easement herein granted is subject to all prior licenses, leases, and easements of record.

IN WITNESS WHEREOF, SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, has caused its name to be signed and its seal to be affixed by the undersigned officers thereunto duly authorized, this ____ day of _____, 20__.

President

ATTEST &
COUNTERSIGN _____

Secretary

11

STATE OF ARIZONA)

) ss.

County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ and _____, as _____ President and _____ Secretary, respectively, of SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.

My Commission Will Expire:

Notary Public

(Saros/land/easementCityofTempe/PES:jlb)



REVISED OCTOBER 6, 2000
REVISED FEBRUARY 24, 2000
REVISED FEBRUARY 2, 2000
NOVEMBER 19, 1999
DEI #99200

**LEGAL DESCRIPTION
EASEMENT FOR ROADWAY**

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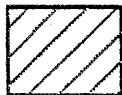
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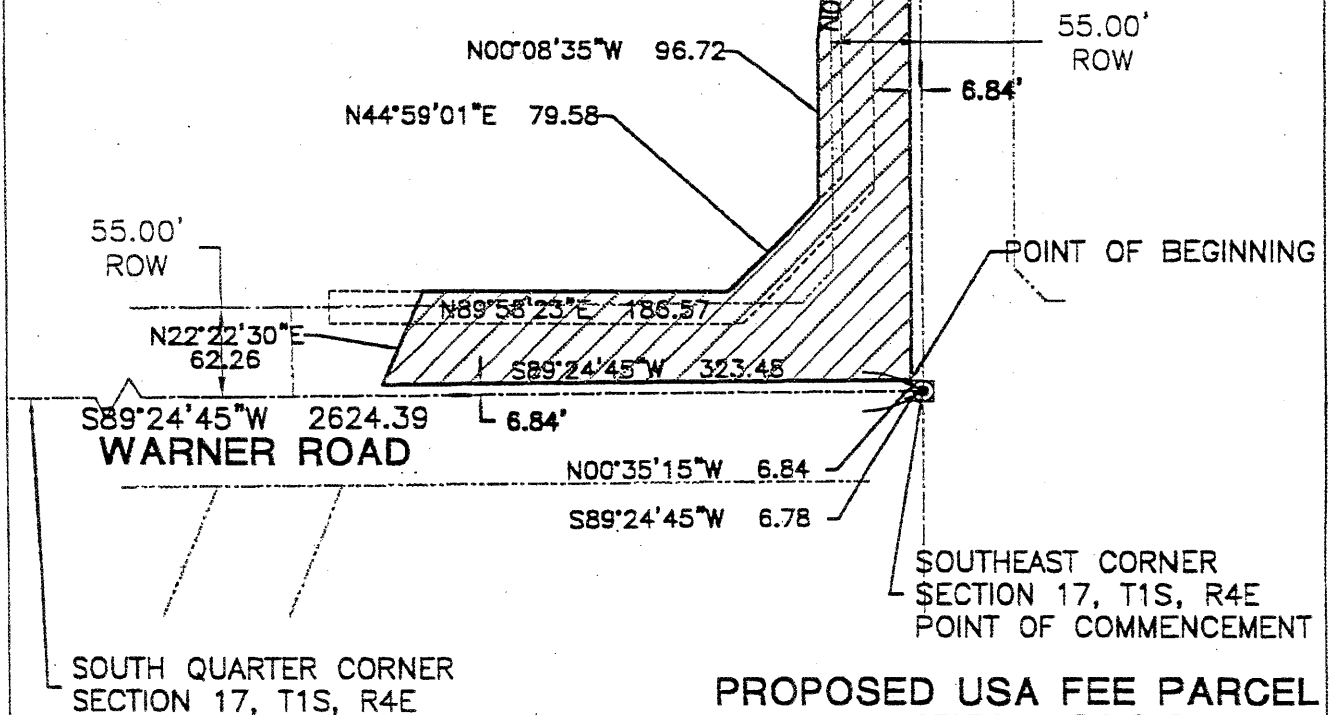
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PROPOSED
USA FEE
TITLE PROPERTY
51755 SQ. FT.
OR 1.19 AC.



NOT TO SCALE



PROPOSED USA FEE PARCEL
SECTION 17, T1S, R4E

DATE: 8/18/99 C:\DWG\9030\9030EX03 DRAWN: JAH

EXHIBIT "A"

(to Easement for Roadway)

Page 2 of 2

7600 N. 15th Street, Suite 290
Arizona 85020 Ph. (602) 954-0038

PROFESSIONAL SERVICES